

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
MANUEL SAGASTUME,)	
)	
Complainant,)	
)	CHARGE NO. 2001CA3022
and)	EEOC: N/A
)	ALS NO: 11828
HAYDOCK CASTER COMPANY,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's Motion to Dismiss Complaint, with exhibits attached. Respondent filed a Supplemental Brief in Support of Motion to Dismiss Complainant. Complainant failed to file a Response to the motion. This matter is ripe for decision.

CONTENTIONS OF THE PARTIES

Respondent contends that a ruling for dismissal should issue in its favor as a matter of law because Complainant's Complaint of age discrimination was improperly filed with the Illinois Human Rights Commission (Commission), and therefore the Commission lacks jurisdiction over the matter. They state that the Charge filed with the Illinois Department of Human Rights (Department), which relates to this matter remains pending with the Department. Respondent states that the parties agreed to an additional extension to investigate the matter with the Department up to December 25, 2002.

Complainant did not respond to the contentions made by Respondent.

FINDINGS OF FACT

Based on the record in this matter, I make the following findings of fact:

1. Complainant, Manuel Sagastume, filed Charge Number 2001 CA 3022 with the Department on June 28, 2001.
2. On April 20, 2002, the parties signed a written agreement to extend the 365 day time limit for the Department's investigation by 90 days, or until September 26, 2002.
3. On September 13, 2002, the parties signed a second written agreement to extend the 365 day time limit for the Department's investigation by 90 days, or until December 25, 2002.
4. Complainant filed a Complaint with the Commission with the underlying charge with the Commission on July 5, 2002.
5. The Department is currently investigating Complainant's underlying charge.

CONCLUSIONS OF LAW

1. Based on the record in this matter, The Illinois Human Rights Commission lacks jurisdiction of this matter.

DETERMINATION

Respondent's Motion to Dismiss should be granted because, based upon the admissible evidence in the record, the Illinois Human Rights Commission lacks jurisdiction over this matter.

DISCUSSION

56 Ill. Admin. Code §5300.530 (b) and §5300.730 of the Procedural Rules of the

Commission provides that the Administrative Law Judge has authority to hear any proper motions or objections, including motions to dismiss. Section 8-106.1 of the Human Rights Act specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 883 (1st Dist. 1993).

In the case at bar, it is clear that there is no issue between the parties that this Complaint was filed prematurely and that the underlying charge involved is presently being investigated by the Department. Therefore, it is also clear that the Commission lacks jurisdiction over this matter. The parties, pursuant to 7A-102(G)(1) of the Illinois Human Rights Act signed written agreements to extend the 365 day time limit for the Department's investigation and the procedural filing dates set forth in 7A-102 by 90 days and an additional 90 days. The Complaint in this matter was filed on July 5, 2002, which was prior to the cut-off date set out by the agreement of December 25, 2002.

CONCLUSION

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary

judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

Taking the evidence in the record as competent, it appears that there is no genuine issue regarding the fact that the Commission lacks jurisdiction over this matter.

Therefore, Respondent's Motion to Dismiss should be granted as a matter of law.

RECOMMENDATION

Thus, for all of the above reasons, it is recommended that Complainant and Respondent's Motion to Dismiss be granted, without prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: December 16, 2002

BY:
NELSON EDWARD PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION